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8 KAMERON LEE

9 **UNITED STATES DISTRICT COURT**

10 **EASTERN DISTRICT OF CALIFORNIA**

11
12 THERESE L. LESHER,

13 Plaintiff,

14 vs.

15 CITY OF ANDERSON, et al.

16 Defendants.
17

) Case No.: 2:21-cv-00386-WBS-DMC

) **STIPULATED PROTECTIVE ORDER**

18 **1. PURPOSES AND LIMITATIONS**

19 Disclosure and discovery activity in this action are likely to involve production of
20 confidential, proprietary, or private information for which special protection from public
21 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.

22 Accordingly, the parties hereby stipulate to the following Protective Order. The parties
23 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
24 discovery, and that the protection it affords from public disclosure and use extends only to the
25 limited information or items that are entitled to confidential treatment under the applicable legal
26 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Order
27 does not entitle them to file confidential information under seal; Local Rule 141 sets forth the
28 procedures that must be followed and the standards that will be applied when a party seeks

1 permission from the court to file material under seal.

2 2. DEFINITIONS

3 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
4 information or items under this Order.

5 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
6 generated, stored, or maintained) or tangible things that qualify for protection under Federal Rule
7 of Civil Procedure 26(c).

8 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
9 well as their support staff).

10 2.4 Designating Party: a Party or Non-Party that designates information or items that it
11 produces in disclosures or in responses to discovery as "CONFIDENTIAL."

12 2.5 Disclosure or Discovery Material: all items or information, regardless of the
13 medium or manner in which it is generated, stored, or maintained (including, among other things,
14 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
15 responses to discovery in this matter.

16 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
17 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
18 consultant in this action.

19 2.7 House Counsel: attorneys who are employees of a party to this action. House
20 Counsel does not include Outside Counsel of Record or any other outside counsel.

21 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
22 entity not named as a Party to this action.

23 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
24 action but are retained to represent or advise a party to this action and have appeared in this action
25 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

26 2.10 Party: any party to this action, including all of its officers, directors, employees,
27 consultants, retained experts, and Outside Counsel of Record (and their support staff).

28 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery

1 Material in this action.

2 2.12 Professional Vendors: persons or entities that provide litigation support services
3 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
4 organizing, storing, or retrieving data in any form or medium) and their employees and
5 subcontractors.

6 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
7 "CONFIDENTIAL."

8 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
9 Producing Party.

10 3. SCOPE

11 The protections conferred by this Order cover not only Protected Material (as defined
12 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
13 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations,
14 or presentations by Parties or their Counsel that might reveal Protected Material. However, the
15 protections conferred by this Order do not cover the following information: (a) any information
16 that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the
17 public domain after its disclosure to a Receiving Party as a result of publication not involving a
18 violation of this Order, including becoming part of the public record through trial or otherwise;
19 and (b) any information known to the Receiving Party prior to the disclosure or obtained by the
20 Receiving Party after the disclosure from a source who obtained the information lawfully and
21 under no obligation of confidentiality to the Designating Party. Any use of Protected Material at
22 trial shall be governed by a separate agreement or order.

23 4. DURATION

24 Even after final disposition of this litigation, the confidentiality obligations imposed by this
25 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
26 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
27 and defenses in this action, with or without prejudice; and (2) final judgment herein after the
28 completion and exhaustion of all appeals, re-hearings, remands, trials, or reviews of this action,

1 including the time limits for filing any motions or applications for extension of time pursuant to
2 applicable law.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
5 or Non-Party that designates information or items for protection under this Order must take care
6 to limit any such designation to specific material that qualifies under the appropriate standards.
7 The Designating Party must designate for protection only those parts of material, documents,
8 items, or oral or written communications that qualify, so that other portions of the material,
9 documents, items, or communications for which protection is not warranted are not swept
10 unjustifiably within the ambit of this Order.

11 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
12 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
13 unnecessarily encumber or impede the case development process or to impose unnecessary
14 expenses and burdens on other parties) expose the Designating Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it designated for
16 protection do not qualify for protection, that Designating Party must promptly notify all other
17 Parties that it is withdrawing the mistaken designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
19 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
20 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
21 designated before the material is disclosed or produced. Designation in conformity with this Order
22 requires:

23 (a) for information in documentary form (e.g., paper or electronic documents,
24 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
25 Party affix the legend "CONFIDENTIAL" to each page that contains protected material. If only
26 a portion or portions of the material on a page qualifies for protection, the Producing Party also
27 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
28 margins).

1 A Party or Non-Party that makes original documents or materials available for inspection
 2 need not designate them for protection until after the inspecting Party has indicated which material
 3 it would like copied and produced. During the inspection and before the designation, all of the
 4 material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting
 5 Party has identified the documents it wants copied and produced, the Producing Party must
 6 determine which documents, or portions thereof, qualify for protection under this Order.

7 Then, before producing the specified documents, the Producing Party must affix the
 8 "CONFIDENTIAL" legend to each page that contains Protected Material. If only a portion or
 9 portions of the material on a page qualifies for protection, the Producing Party also must clearly
 10 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

11 (b) for testimony given in deposition or in other pretrial or trial proceedings,
 12 that the Designating Party identify on the record, before the close of the deposition, hearing, or
 13 other proceeding, all protected testimony.

14 (c) for information produced in some form other than documentary and for any
 15 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
 16 container or containers in which the information or item is stored the legend "CONFIDENTIAL."
 17 If only a portion or portions of the information or item warrant protection, the Producing Party, to
 18 the extent practicable, shall identify the protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 20 designate qualified information or items does not, standing alone, waive the Designating Party's
 21 right to secure protection under this Order for such material. Upon timely correction of a
 22 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
 23 in accordance with the provisions of this Order.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 26 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
 27 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 28 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to

1 challenge a confidentiality designation by electing not to mount a challenge promptly after the
2 original designation is disclosed.

3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
4 process by providing written notice of each designation it is challenging and describing the basis
5 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
6 notice must recite that the challenge to confidentiality is being made in accordance with this
7 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
8 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
9 forms of communication are insufficient) within 14 calendar days of the date of service of notice.
10 In conferring, the Challenging Party must explain the basis for its belief that the confidentiality
11 designation was improper and must give the Designating Party an opportunity to review the
12 designated material, to reconsider the circumstances, and, if no change in designation is offered,
13 to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage
14 of the challenge process only if it has engaged in this meet and confer process first or establishes
15 that the Designating Party is unwilling to participate in the meet and confer process in a timely
16 manner.

17 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
18 intervention, the parties shall follow the procedures set forth in Local Rule 251 to resolve the
19 challenge. The burden of persuasion in any such challenge proceeding shall be on the Designating
20 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
21 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
22 sanctions. Until the court rules on the challenge, the Parties shall continue to afford the material
23 in question the level of protection to which it is entitled under the Producing Party's designation.

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
26 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,
27 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
28 to the categories of persons and under the conditions described in this Order. When the litigation

1 has been terminated, a Receiving Party must comply with the provisions of Section 13 below.

2 Protected Material must be stored and maintained by a Receiving Party at a location and in
3 a secure manner that ensures that access is limited to the persons authorized under this Order.

4 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
5 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
6 information or item designated "CONFIDENTIAL" only to:

7 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
8 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
9 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
10 Bound" that is attached hereto as Exhibit A;

11 (b) the officers, directors, and employees (including House Counsel) of the
12 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
13 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

14 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
15 is reasonably necessary for this litigation and who have signed the "Acknowledgment and
16 Agreement to Be Bound" (Exhibit A);

17 (d) the court and its personnel;

18 (e) court reporters and their staff, professional jury or trial consultants, mock
19 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and
20 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

21 (f) during their depositions, witnesses in the action to whom disclosure is
22 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
23 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. If counsel
24 for the parties stipulate, or the Designating Party requests separate binding of Protected Material,
25 pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
26 must be separately bound by the court reporter and may not be disclosed to anyone except as
27 permitted under this Stipulated Protective Order;

28 (g) the author or recipient of a document containing the information or a

1 custodian or other person who otherwise possessed or knew the information.

2 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
3 LITIGATION

4 If a Party is served with a subpoena or a court order issued in other litigation that compels
5 disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party
6 must:

7 (a) promptly notify in writing the Designating Party. Such notification shall include a
8 copy of the subpoena or court order;

9 (b) promptly notify in writing the party who caused the subpoena or order to issue in
10 the other litigation that some or all of the material covered by the subpoena or order is subject to
11 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;
12 and

13 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
14 Designating Party whose Protected Material may be affected.

15 If the Designating Party timely seeks a protective order, the Party served with the subpoena
16 or court order shall not produce any information designated in this action as "CONFIDENTIAL"
17 before a determination by the court from which the subpoena or order issued, unless the Party has
18 obtained the Designating Party's permission. The Designating Party shall bear the burden and
19 expense of seeking protection in that court of its confidential material, and nothing in these
20 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
21 disobey a lawful directive from another court.

22 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
23 LITIGATION

24 (a) The terms of this Order are applicable to information produced by a Non-Party in
25 this action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in
26 connection with this litigation is protected by the remedies and relief provided by this Order.
27 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
28 additional protections.

1 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
2 Party's confidential information in its possession, and the Party is subject to an agreement with the
3 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

4 (1) promptly notify in writing the Requesting Party and the Non-Party that
5 some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

6 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
7 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
8 the information requested; and

9 (3) make the information requested available for inspection by the Non-Party.

10 (c) If the Non-Party fails to object or seek a protective order from this court within 14
11 days of receiving the notice and accompanying information, the Receiving Party may produce the
12 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
13 seeks a protective order, the Receiving Party shall not produce any information in its possession
14 or control that is subject to the confidentiality agreement with the Non-Party before a
15 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
16 burden and expense of seeking protection in this court of its Protected Material.

17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
19 Material to any person or in any circumstance not authorized under this Stipulated Protective
20 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
21 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
22 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
23 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and
24 Agreement to Be Bound" that is attached hereto as Exhibit A.

25 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
26 MATERIAL

27 When a Producing Party gives notice to Receiving Parties that certain inadvertently
28 produced material is subject to a claim of privilege or other protection, the obligations of the

1 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
2 is not intended to modify whatever procedure may be established in an e-discovery order that
3 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
4 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
5 communication or information covered by the attorney-client privilege or work product protection,
6 the parties may incorporate their agreement in the stipulated protective order submitted to the
7 court.

8 12. MISCELLANEOUS

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
10 seek its modification by the court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
12 Order no Party waives any right it otherwise would have to object to disclosing or producing any
13 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
14 no Party waives any right to object on any ground to use in evidence of any of the material covered
15 by this Protective Order.

16 12.3 Filing Protected Material. Without written permission from the Designating Party
17 or a court order secured after appropriate notice to all interested persons, a Party may not file in
18 the public record in this action any Protected Material. A Party that seeks to file under seal any
19 Protected Material must comply with Local Rule 141. Protected Material may only be filed under
20 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If
21 a Receiving Party's request to file Protected Material under seal pursuant to Local Rule 141 is
22 denied by the court, then the Receiving Party may file the information in the public record unless
23 otherwise instructed by the court.

24 13. FINAL DISPOSITION

25 Within 60 calendar days after the final disposition of this action, as defined in Section 4,
26 upon written notification served by the Producing or Designating Party, each Receiving Party must
27 return all Protected Material to the Producing Party or destroy such material. As used in this
28 subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and

1 any other format reproducing or capturing any of the Protected Material. Whether the Protected
2 Material is returned or destroyed, the Receiving Party must submit a written certification to the
3 Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day
4 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was
5 returned or destroyed, and (2) affirms that the Receiving Party has not retained any copies,
6 abstracts, compilations, summaries, or any other format reproducing or capturing any of the
7 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy
8 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
9 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
10 and expert work product, even if such materials contain Protected Material. Any such archival
11 copies that contain or constitute Protected Material remain subject to this Protective Order as set
12 forth in Section 4.

13 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

14
15 Dated: August 3, 2021

ANGELO, KILDAY & KILDUFF, LLP

16 */s/ Gökalp Y. Gürer*

17 By: _____
18 DERICK E. KONZ
19 GÖKALP Y. GÜRER
20 Attorneys for Defendants CITY OF
21 ANDERSON, SEAN MILLER,
JEFFREY MILEY, and KAMERON
LEE

22 Dated: July 29, 2021

LAW OFFICE OF SANJAY S. SCHMIDT
and
LAW OFFICE OF JOSEPH S. MAY

23
24 */s/ Sanjay S. Schmidt*
25 *(as authorized on 7.29.2021)*

26 By: _____
27 SANJAY S. SCHMIDT
28 JOSEPH S. MAY
Attorneys for Plaintiff THERESE L.
LESHER

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: AUGUST 3, 2021

A handwritten signature in dark ink, appearing to read "Dennis M. Cota", written over a horizontal line.

DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Eastern District of California on
_____ [date] in the case of *Leshner v. City of Anderson, et al.*, No. 2:21-cv-00386-
WBS-DMC. I agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose me to sanctions
and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
manner any information or item that is subject to this Stipulated Protective Order to any person or
entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where
sworn and signed: _____

Printed Name: _____

Signature: _____